

REMARKS/ARGUMENTS

In reply to the Claim Rejection stated in the Official Action, the applicant respectfully considers the examiner's finding to be inaccurate, and puts forward the following arguments in defence of the patentability of the claims.

In paragraph 2 of the Official Action, the examiner rejects claim 4 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the examiner considers that the phrase "such as" is indefinite because claim 4 is unclear.

In this respect, the applicant agrees to remove the sentence "such as an ATX board and an operating system" from claim 4. If the examiner considers it necessary the whole claim 4 may be deleted.

In paragraph 4, the examiner rejects claims 2-4, 8 under 35 U.S.C. 102(b) as being anticipated by Thorpe (US 5,276,865).

Thorpe describes a system for making automatic backup copies of a hard drive of at least one computer to a storage unit

connected to said computer. However, we disagree with the examiner's view that in Thorpe the user selects files by selecting what drives are to be backed up; we consider that the system does not select individual files stored in a hard drive but only "whole" drives and we consider that the Thorpe specification by no means describes the possibility of selecting files (note column 3, lines 8-9 where the user can select what drives are to be backed up, without selecting files; note column 1, lines 2-3 where the device automatically backs up the memory (not selected files) of a computer; note column 6, lines 38-39 where the backup control file backs up two drives (not selected files) to a tape backup; note column 9, lines 20-22, where a means for storing instructions directs a computer to back up said first non-volatile memory media (not selected files)).

In 1992, when Thorpe was filed, backups could be performed with application programs or at the operating system level. In both cases, the selection of files was very difficult because to achieve such selection the user should modify, for example, script files or batch files and write an instruction or command for each file selected every time the user wanted copy a file. For this reason, Thorpe does not consider the possibility of selecting files and only performs the backup copy of "whole" drives.

On another hand, Thorpe includes backup software; however we disagree with the examiner's view that Thorpe comprises configurable control software. Thorpe does not disclose any operation apart from the copy itself that is performed by the software, so the "software required" in column 5, lines 9-10 is only the boot control file (necessary in any computer) and the backup system software and these cannot be considered "configurable control software" as defined in the claim, i.e. performing the steps of detecting a command, running backup software, detecting the end of the backup copies and switching off the computer. For example, in claim 13, Thorpe clearly defines what is the required software: a boot control file of the computer which is modified to include a path to a backup memory location, and a backup control file able to execute a first routine for backing up the memory of the computer and a second routine for disconnecting the computer from a power supply. The execution of each routine is controlled by the CPU of the computer, so clearly the control is performed by hardware and not by software. Also, in our invention, the configurable control software is always running over the operating system in order to detect the switched-off "command" generated by the user.

Finally, we disagree with the examiner's view that, in Thorpe, when the user interacts with the computer, a "command" is

generated for the computer to be switched off. In the following we will support our view by showing that the "command" in Thorpe is not generated by the user and does not perform the steps claimed in claim 2.

In column 8, lines 17-20 of Thorpe, the "command" is generated by the CPU, and not by the user's interaction with the computer, and said "command" is to begin execution of the backup control file, and not to switch off the computer. It has to be borne in mind that in 1992, when Thorpe was filed, it was not possible to cause switching off of the computer by means of software (operating system) and such switching off by software is the only way to generate a "command" for switching off the computer. In Thorpe, when the power switch is switched to "off" (the user interacts with the computer), a "signal" is sent to the CPU (note column 7, lines 17-19). The difference between "command" and "signal" is important. A "Command" is an instruction that must be executed by CPU, whereas "signal" only indicates to the CPU that an event has occurred in the computer (in this case, that the power switch has been switched to "off"). A "Command" can only be generated by software, as in Windows XP, wherein when the user wants to switch off the computer, acts on the operating system (Start button), which generates a "switch off" "command" to the CPU. CPU receives the "command" and acts on the motherboard to switch off the computer. In our invention, the

"configurable control software" detects this "command" before it "reaches" the CPU and executes the "backup software", i.e. the control of switching off is performed by software. In Thorpe, the "signal" is generated by the power switch and always "reaches" the CPU, no control being possible and this triggers execution of the "backup control file", i.e. the control of switching off is performed by hardware and "configurable control software" or similar doesn't exist. Also, since the configurable control software detects the switched-off "command" of the computer, the system assures that open files do not exist and that, therefore, do not take place errors in the moment of the execution of the backup copy. This way it is carried out the copy of all the files selected by the user. It is impossible in Thorpe.

In summary, it is submitted that claim 2 is new over Thorpe in that the user can select the files to back up, in that the system comprises a "configurable control software" and in that the switching off of the computer is performed by software, generating a "command"; and that the claim is also not obvious, because the new features are not derivable by the skilled man from the teachings of Thorpe or other prior art documents and it provides advantageous technical effects.

In view of the above arguments, it is submitted that the subject matter of claim 2 is novel and non-obvious; and that

consequently dependent claims 3 to 8 are also novel and non-obvious. Accordingly, it is submitted that claims 2-8 are in condition for allowance.

Respectfully submitted,

JOSE MARIA SERICHOL BLASCO - 1



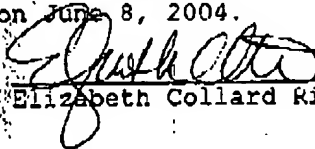
COLLARD & ROE, P.C.  
1077 Northern Boulevard  
Roslyn, New York 11576  
(516) 365-9802

Allison C. Collard, Reg.No.22,532  
Edward R. Freedman, Reg.No.26,048  
Frederick J. Dorchak, Reg.No.29,298  
Elizabeth Collard Richter, Reg.No.35,103  
Attorneys for Applicant

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Fax No. 703-746-7230

I hereby certify that this correspondence is being sent by facsimile-transmission to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 8, 2004.

  
Elizabeth Collard Richter

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